

REMARKS/ARGUMENTS

In the Office Action mailed May 8, 2009 (hereinafter, “Office Action”), claims 1-3, 5, 9-16 and 18-19 stand rejected under 35 U.S.C. § 102. Claims 4, 6-8, 17 and 20 stand rejected under 35 U.S.C. § 103. Claims 1, 13, 15, 16, 18 and 19 have been amended.

Applicant respectfully responds to the Office Action.

I. Claims 1-3, 5, 9-16 and 18-19 Rejected Under 35 U.S.C. § 102(b)

Claims 1-3, 5, 9-16 and 18-19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0129152 to McBrearty et al. (hereinafter, “McBrearty”). This rejection is respectfully traversed.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP § 2131 (citing Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). “The identical invention must be shown in as complete detail as is contained in the ... claim.” Id. (citing Richardson v. Suzuki Motor Co., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). In addition, “the reference must be enabling and describe the applicant’s claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention.” In re Paulsen, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Applicant respectfully submits that the claims at issue are patentably distinct from McBrearty. McBrearty does not disclose all of the subject matter in these claims. Independent claim 1 has been amended to recite that “the at least one sensitive file continues to be stored on the computing device.” Support for this amendment is found in Figure 2 and paragraphs [0047]-[0052] of the specification. Thus, claim 1 requires that if the connection is not identified in the authorized connection list, the sensitive file information will be accessed and an access prevention task will be performed that prevents access to the at least one sensitive file. However, all throughout the process, including the time in which the access prevention task is being performed, the at least one sensitive file continues to be stored on the computer system.

McBrearty does not disclose this subject matter. McBrearty teaches that if there is unauthorized access to the file, or an attempt to gain unauthorized access to a file, that file is deleted and destroyed. (*See* McBrearty [0007]-[0008]). The following excerpts from McBrearty emphasize this point:

...Routines are set up for tracking parameters relative to the handling and access to the contents of files authorized to users at any particular level as set forth in step 84 so as to be able to determine whether a user is using a file that he obtained at a level which is unauthorized for the particular user, step 85. Finally, step 86, a *routine is set up for deleting and, thus, destroying files either accessed by an unauthorized user under step 84 or using files at levels unauthorized for the user in step 85.*

* * *

If, in step 97, a determination is made that the user ID does not have the appropriate authorization level, then the present process has been programmed to conclude that two consecutive ID failures gives rise to a suspicion of unauthorized access and the *requested file is destroyed*, step 98.

* * *

However, making a copy of a file after an ID failure at the higher access level has been programmed to also give rise to a suspicion of unauthorized access and a Yes determination at step 94 also *causes the requested file to be destroyed*, step 98.

McBrearty [0021]-[0023] (italics added).¹ Even the title of McBrearty defines the invention as “Protecting contents of computer data files from suspected intruders by programmed file destruction.” McBrearty clarifies that “[a]fter a file is destroyed in step 98, an error message is provided to the user to reload the following (destroyed) identified files from backup, step 99. The user, who has been maintaining periodically updated backup files, e.g. on CD-ROM or on disk, will then reload the backup files from such storage.” (McBrearty, paragraph [0025].) Thus, the file is

¹ See also McBrearty [0007]-[0008] (“The present invention provides a system, method and program for protecting data files from being stolen or compromised.... The present invention offers a very aggressive solution to the problem of theft of data in files. At the first suspicion of intrusion, there is a set up for destroying the intruded files. It would be advantageous to have duplicate or backup files for all files. These must be substantially inaccessible to user requests. In some systems, the data files may be so sensitive that the system may be programmed to have the requested files destroyed at the first unauthorized request for access to the file contents or at the second consecutive unauthorized request”).

deleted as a security measure and the user will reload the file from a backup file to restore the file. *See id.; see also* McBrearty Abstract (“It would be advantageous to have duplicate or backup files for all files. These duplicates must be substantially inaccessible to user requests.”).

The Office Action indicates that McBrearty teaches “a protection process of preventing access to the sensitive file by performing an access protection task such as deleting the file or making it inaccessible.” (Office Action, p. 3). As can be seen by the above-recited text, McBrearty’s system is a “very aggressive solution to the problem of theft of data in files” (McBrearty, [0007]) in that it deletes the file that is subject to attack (i.e., the file is inaccessible because it has been deleted). The present claims, however, require that the sensitive file “continues to be stored on the computing device.” Deleting a file and then reloading it from a backup is not the same as having the file continuously stored on the computer device while the access prevention task is being performed.

In view of the foregoing, Applicant respectfully submits that claim 1 is patentably distinct from McBrearty. Accordingly, Applicant respectfully requests that the rejection of claim 1 be withdrawn because McBrearty does not disclose all of the subject matter of claim 1.

Claims 2-3, 5 and 9-12 depend directly from claim 1. Accordingly, Applicant respectfully requests that the rejection of claims 2-3, 5 and 9-12 be withdrawn.

Claim 13 is being amended to recite that “the at least one sensitive file continues to be stored on the computing device.” As discussed above, McBrearty does not disclose this claimed subject matter. Accordingly, Applicant respectfully submits that claim 13 is allowable. Claim 14 depends directly from claim 13, and is therefore allowable for at least the same reasons.

Claim 15 is being amended to recite that “the at least one sensitive file continues to be stored on the computing device.” As discussed above, McBrearty does not disclose this claimed subject matter. Accordingly, Applicant respectfully submits that claim 15 is allowable. Claim 16 depends directly from claim 15, and is therefore allowable for at least the same reasons.

Claim 18 is being amended to recite that “the at least one sensitive file continues to be stored on the computing device.” As discussed above, McBrearty does not disclose this claimed subject matter. Accordingly, Applicant respectfully submits that claim 18 is allowable. Claim 19 depends

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directly from claim 18, and is therefore allowable for at least the same reasons.

II. Claims 6-8, 17 and 20 Rejected Under 35 U.S.C. § 103(a)

Claims 6-8, 17 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McBrearty in view of U.S. Patent No. 6,889,210 to Vainstein (hereinafter, “Vainstein”). This rejection is respectfully traversed.

The factual inquiries that are relevant in the determination of obviousness are determining the scope and contents of the prior art, ascertaining the differences between the prior art and the claims in issue, resolving the level of ordinary skill in the art, and evaluating evidence of secondary consideration. KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 2007 U.S. LEXIS 4745, at **4-5 (2007) (citing Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18 (1966)). As the Board of Patent Appeals and Interferences has recently confirmed, “obviousness requires a suggestion of all limitations in a claim.” In re Wada and Murphy, Appeal 2007-3733 (citing CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003)). Moreover, the analysis in support of an obviousness rejection “should be made explicit.” KSR, 2007 U.S. LEXIS 4745, at **37. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Id. (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Applicant respectfully submits that the claims at issue are patentably distinct from the cited references. The cited references do not teach or suggest all of the subject matter in these claims.

Claims 6-8 depend directly from claim 1. Claim 17 depends directly from claim 15. Claim 20 depends directly from claim 18. Accordingly, Applicant respectfully requests that the rejection of claims 6-8, 17 and 20 be withdrawn.

III. Claim 4 Rejected Under 35 U.S.C. § 103(a)

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McBrearty in view of U.S. Patent Application Publication No. 2003/0056095 to Elliott et al. (hereinafter,

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“Elliott”). This rejection is respectfully traversed.

The standard to establish a *prima facie* case of obviousness is provided above.

Applicant respectfully submits that the claims at issue are patentably distinct from the cited references. The cited references do not teach or suggest all of the subject matter in these claims.

Claim 4 depends indirectly from claim 1. Accordingly, Applicant respectfully requests that the rejection of claim 4 be withdrawn.

IV. Conclusion

Applicant respectfully asserts that all pending claims are patentably distinct from the cited references, and requests that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

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